

**CIVIL SERVICE COMMISSION MINUTES  
MAY 7, 2008**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

W. Dale Bailey  
A.Y. Casillas  
Barry I. Newman

Absent was:

Francesca Krauel

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer  
William D. Smith, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

**Approved  
Civil Service Commission  
June 4, 2008**

COUNTY OF SAN DIEGO  
CIVIL SERVICE COMMISSION MINUTES  
MAY 7, 2008

1:30 p.m.            CLOSED SESSION: Discussion of Personnel Matters  
                         and Pending Litigation

2:30 p.m.            OPEN SESSION: Room 358, 1600 Pacific Highway, San  
                         Diego, California

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,7,8,10,11,12,13		9	16,17,18

COMMENTS: Motion by Newman to approve all items not held for  
discussion; seconded by Casillas. Carried.

CLOSED SESSION AGENDA  
County Administration Center, Room 400B  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the public may be present at this  
location to hear the announcement of the  
closed session agenda.

A. Commissioner Krauel: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Fern  
Steiner, Esq., on behalf of **2008-04**, appealing an Order  
of Termination and Charges from the Sheriff's  
Department.

B. Commissioner Krauel: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Julie  
Buechler, Esq., on behalf of **2008-02**, appealing an  
Order of Termination and Charges from the Sheriff's  
Department.

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(GOV. CODE SEC. 54956.9(a)) **William B. Kolender v. San  
Diego County Civil Service Commission; Humberto Bahena  
and Alberto Rios Garcia, Real Parties in Interest**, Case  
No. 37-2008-00081521-CU-WM-CTL.

**OPEN SESSION AGENDA**  
**County Administration Center, Room 358**

**MINUTES**

1. Approval of the Minutes of the regular meeting of April 2, 2008.

**Approved.**

**CONFIRMATION OF REASSIGNMENTS AND ASSIGNMENT**

2. Commissioner Bailey: Donovan Jacobs, Esq. on behalf of **2008-01**, appealing an Order of Termination and Charges from the Sheriff's Department. (Former Commissioner Fisher previously assigned.)

**Confirmed.**

3. Commissioner Newman: **Lynn Falvey**, Protective Services Supervisor, alleging disability discrimination by the Health and Human Services Agency. (Former Commissioner Fisher previously assigned.) (See item nos. 12 & 13 below.)

**Confirmed.**

4. Commissioner Newman: **Tracy Martin**, former Human Service Specialist, appealing a Final Order to Remove from the Health and Human Services Agency. (Commissioner Krauel previously assigned.)

**Confirmed.**

5. Commissioner Casillas: Kim Martinic, Worksite Organizer, SEIU Local 221, on behalf of **Karen McCracken**, former Animal Control Officer, appealing an Order of Termination and Charges from the Department of Animal Services.

**Confirmed.**

**CLASSIFICATION REVIEWS**

**Findings**

6. Commissioner Casillas: Julia Haus, Esq. on behalf of **Mary Ann Knockeart, Jeffrey Martin, George Osper, Jeffery Reichert, Dale Santee, Barton Sheela III, Liesbeth van den Bosch, and Steven Wadler**, Deputy Alternate Public Defenders IV, Office of the Alternate Public Defender, Rule XII classification review.

## FINDINGS AND RECOMMENDATIONS:

Employees are DAPD IVs. The Department had four encumbered Level V positions, which the appointing authority was filling with Level IV DAPDs. Believing that they were working out of class, Employees requested that the Department of Human Resources (DHR) perform a classification study. Pursuant to Civil Service Rule XII, the DHR obliged, designating January 1, 2007 to June 29, 2007 as the relevant six-month period for the study. At the end of the study, DHR found that one DAPD IV was working out of class. It further recommended an organizational study of the Department to better allocate positions. However, the study found that none of the Employees in this appeal was working out of class.

At the Commission hearing, Mary Ann Knockeart, Jeffrey Martin, Jeff Reichert, Barton Sheela III, Liesbeth van den Bosch, and Steven Wadler failed to prove they were working out of class for the relevant period. They presented testimony and evidence regarding their exceptional trial skills, and their experience coordinating capital murder case defense teams. These facts did not equate to working out of class. As to them, it is recommended that DHR's determination be affirmed. However, as to one of the Employees, George Osper, DHR applied questionable quantitative standards in its determination. As to him, it is recommended that DHR's determination be reversed, and that he be awarded back pay and benefits; and that the position he is encumbering be reclassified to Deputy Alternate Public Defender V, allowing Mr. Osper to qualify for the position under applicable Civil Service Rules. Further, the appeal of Dale Santee was deemed abandoned due to his failure to appear at the hearing.

**Motion by Casillas to approve Findings and Recommendations; seconded by Newman. Carried.**

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>KRAUEL</b>

## DISCIPLINE

### Findings

7. Commissioner Krauel: Fern Steiner, Esq., on behalf of **2008-04**, appealing an Order of Termination and Charges from the Sheriff's Department.

## FINDINGS AND RECOMMENDATIONS:

Employee was a Deputy Sheriff-Detentions/Court Services in the Sheriff's Department who was terminated for allegedly failing to conduct a mandatory security check, and for involvement in making a false computer entry, which documented the security check as completed. Employee was one of two involved in the incident.

The Department proved that Employee was jointly responsible for ensuring the security check was completed; had participated documenting the security check as completed, which by the end of the shift employee knew was false; that by the end of the shift employee knew the chain of command had not been informed of the missed security check nor of the erroneous documentation of the missed security check; and that by the next day employee knew the other Deputy had misrepresented to the chain of command that the security check had been completed. Employee failed to advise the chain of command about the missed check, the false report, and the other Deputy's misrepresentation until directly questioned about the incident.

Accordingly, the Department proved all of the factual charges in the Order of Termination. While the Department failed to establish that the conduct constituted "Inefficiency" as charged in the Order of Termination, it established that the conduct constituted "acts that are incompatible with and/or inimical to the public service." Employee knowingly aided in the falsification of a Departmental report. It is therefore recommended that Causes I and II are not sustained; that Cause III is sustained, that the Order of Termination be affirmed, and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Bailey to approve Findings and Recommendations; seconded by Casillas; discussion:**

**Commissioner Newman explained that he does not dispute the Findings and Recommendations regarding Cause III or the recommendation to affirm the termination. However, he does not agree with the Findings and Recommendations with regard to Causes I and II. He explains: "The basis for that action on the part of our absent colleague was a dictionary definition which I believe to be extraordinarily limited in its scope and not at all applicable to the facts in this matter. The facts**

in this matter do not address the issue of how the function was performed, but they address the issue that the function was not performed. So to talk in terms of whether or not it was performed in an efficient manner begs the question. I think that it is clear in this fact situation that both the act of the check was not done and the report was false, and that there is no question of efficiency or inefficiency. I have checked another dictionary, the Webster's Encyclopedic Unabridged Dictionary of the English Language, and it defines inefficient (under this fact situation) as "not efficient". Referring to the definition for efficiency - *it is performing or functioning in the best possible and least wasteful manner; having and using requisite knowledge, skill and industry - competent and capable.*"

In this instance Commissioner Newman asserts that Causes I and II were in fact proved and the Recommendation that they are not sustained is impossible for him to accept. He will be voting for the acceptance of the recommendation.

Commissioners Bailey and Casillas concur with the above; Causes I and II were sustained. They support the recommendation to affirm the termination.

Motion carried subject to above comments.

AYES:	BAILEY, CASILLAS, NEWMAN
NOES:	NONE
ABSTENTIONS:	NONE
ABSENT:	KRAUEL

8. Commissioner Krauel: Julie Buechler, Esq., on behalf of **2008-02**, appealing an Order of Termination and Charges from the Sheriff's Department.

#### FINDINGS AND RECOMMENDATIONS:

Employee was a Deputy Sheriff-Detentions/Court Services in the Sheriff's Department who was terminated for allegedly failing to conduct a mandatory security check, making a false computer entry recording the check as completed, and dishonestly telling employee's supervisor that the security check had been completed. Employee was one of two deputies involved in the incident.

Employee presented expert testimony and evidence concerning a polygraph examination, which purportedly indicated that employee was truthful in employee's version of the incident. However, such evidence was outweighed by the admittedly false computer entry, the recollection of a sergeant that Employee had told him the security check was completed, and the transcript of the Internal Affairs interview in which Employee stated that employee had completed the security check.

Accordingly, the Department proved all of the factual charges in the Order of Termination. While the Department failed to establish the conduct constituted "Inefficiency" (Cause 4) as charged in the Order of Termination, it established it constituted "dishonesty" and "acts that are incompatible with and/or inimical to the public service." Employee has severely violated the public trust and risked public safety. It is therefore recommended that Cause IV is not sustained; that Causes I, II, III and V are sustained; that the Order of Termination be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Bailey to approve Findings and Recommendations; seconded by Casillas; discussion:**

Commissioner Newman has similar comments as contained in Agenda Item No. 7 above, except that it applies to Cause IV of the Order. Commissioner Newman will vote to affirm the termination, as well as support the findings on Causes I, II, III and V, however disagrees that Cause IV is not sustained. These comments are echoed by Commissioner Bailey.

Motion carried subject to comments in Agenda Item No. 7, as well as the discussion herein.

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>KRAUEL</b>

## **DISCRIMINATION**

### **Complaints**

9. **Terrence Parks**, Library Technician II, alleging retaliation and gender discrimination by the County Library.

RECOMMENDATION: Assign Commissioner Bailey as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff Recommendation approved.**

### **Findings**

10. Commissioner Newman: **Mary Ann Knockeart**, Deputy Alternate Public Defender IV, alleging gender discrimination by the Office of the Alternate Public Defender.

### **FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission (Commission) on January 16, 2008, the Commission appointed Barry I. Newman to investigate the complaint submitted by Mary Ann Knockeart, which alleged gender discrimination by the Office of the Alternate Public Defender. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Knockeart's Rule VI discrimination complaint be denied; and the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.**

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>KRAUEL</b>

11. Commissioner Newman: **Liesbeth van den Bosch**, Deputy Alternate Public Defender IV, alleging gender discrimination by the Office of the Alternate Public Defender.



FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on February 6, 2008, the Commission appointed Barry I. Newman to investigate the complaint submitted by Liesbeth van den Bosch, which alleged gender discrimination by the Office of the Alternate Public Defender. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Van den Bosch's Rule VI discrimination complaint be denied; and the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.**

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>KRAUEL</b>

12. Commissioner Newman: **Lynn Falvey**, Protective Services Supervisor, alleging disability discrimination by the Health and Human Services Agency. (See item no. 13 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on February 6, 2008, the Commission appointed Cheryl Fisher to investigate the complaint submitted by Lynn Falvey, which alleged disability discrimination by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. Subsequently this matter was reassigned to Commissioner Barry I Newman. The OIA

concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that: The evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that: Ms. Falvey's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.**

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>KRAUEL</b>

#### **OTHER MATTERS**

##### **Performance Appraisal**

13. **Lynn Falvey**, Protective Services Supervisor, Health and Human Services Agency, requesting the sealing of a Performance Appraisal covering the period July 15, 2006 to July 14, 2007. (Held in abeyance pending the outcome of the discrimination investigation, see item no. 12 above.)

RECOMMENDATION: Deny Request.

**Motion by Newman to accept staff recommendation based on Findings in Agenda Item No. 12 above; seconded by Casillas. Carried.**

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>KRAUEL</b>

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### **Extension of Temporary Appointments**

14. Health and Human Services Agency

A. 2 Residential Care Worker Trainees (Halina Bohdal, Louella McCarroll)

B. 2 Residential Care Workers II (Maria Cruz, Heidi Gonzalez)

15. Agriculture, Weights and Measures

1 Insect Detection Specialist II (Claudia Torres)

RECOMMENDATION: Ratify Item Nos. 14 & 15.

**Item Nos. 14 and 15 ratified.**

### **INFORMATION**

16. **Michael Dealy**, Deputy Alternate Public Defender IV, Office of the Alternate Public Defender, withdrawal of request for a classification review under Civil Service Rule XII. (Commissioner Casillas)

**Withdrawn.**

17. **Roberto Quinones Jr.**, Deputy Alternate Public Defender IV, Office of the Alternate Public Defender, withdrawal of request for a classification review under Civil Service Rule XII. (Commissioner Casillas)

**Withdrawn.**

18. Richard Pinckard, Esq. on behalf of **2008-03**, withdrawal of appeal of an Order of Termination and Charges from the Sheriff's Department. (Commissioner Casillas)

**Withdrawn.**

19. Public Input.

ADJOURNED: **3:12 p.m.**

**NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:**

**JUNE 4, 2008**